BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CONNIE YOUNG,

Claimant,

vs.

EAST PENN MANUFACTURING CO., :

Employer,

and

SENTINEL INSURANCE CO.,

Insurance Carrier, Defendants.

File No. 5060180

REHEARING DECISION

The agency issued an arbitration decision in this case in which the undersigned found, among other things, Connie Young is entitled to permanent partial disability (PPD) benefits. Young timely filed an application for rehearing under Rule 876 IAC 4.23 seeking findings of fact and conclusions of law regarding the commencement date for PPD benefits. The undersigned granted Young's rehearing application in order to amend and supplement the arbitration decision so that it properly addresses all disputed issues.

In Young's post-hearing brief, she contends she returned to work on April 6, 2017, which is the first alternative marker under Iowa Code section 85.34(1) to occur and thus ended her healing period. (See Cl. Brief, § IV) Therefore, according to Young, the commencement date for her PPD benefits is April 6, 2017, under Iowa Code section 85.34(2). (Id.) The defendants did not address the commencement-date issue in their post-hearing brief. (See Def. Brief)

lowa Code section 85.34 governs payment of permanent disability benefits. In 2017, the lowa legislature amended provisions of the lowa Workers' Compensation Act, including but not limited to lowa Code section 85.34. See 2017 lowa Acts, ch. 23, §§ 6-14. The 2017 amendments apply to cases in which the alleged date of injury is on or after July 1, 2017. See id. at § 24; see also lowa Code § 3.7(1). The stipulated date of

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injury in this case is August 8, 2016. (Hrg. Rpt. & Order, p. 1) Therefore, Iowa Code section 85.34 in the Code of Iowa 2017¹ applies in this case.

lowa Code section 85.34(1) provides "alternative markers of the end of the healing period." Waldinger Corp. v. Mettler, 817 N.W.2d 1, 9 (lowa 2012); see also Evenson v. Winnebago Indus., 881 N.W.2d 360, 372 (lowa 2012). The alternative markers are when the injured employee:

- 1) Returns to work:
- 2) Reaches maximum medical improvement (MMI) for the injury; or
- 3) Is medically capable of returning to employment substantially similar to that which the employee was engaged at the time of injury. Iowa Code § 85.34(1); Evenson, 881 N.W.2d at 372.

The first of the alternative markers to occur ends a healing period. <u>Id.</u>; <u>Evenson</u>, 881 N.W.2d at 372 (lowa 2012); <u>Crabtree v. Tri-City Elec. Co.</u>, File No. 5059572, pp. 2-3 (App., Mar. 20, 2020). PPD benefits "begin at the termination of the healing period." <u>Id.</u> at § 85.34(2); <u>Evenson</u>, 881 N.W.2d at 372.

Young's stipulated work injury occurred on August 8, 2016. (Hrg. Rpt. & Order, p. 1; see also Arb. Dec., pp. 4-5) She underwent surgery on her left knee on November 3, 2016. (Arb. Dec., p. 11) The defendants began paying Young what they categorized as temporary total disability (TTD) benefits on the date of surgery. (Def. Ex. B, p. 3) However, because Young's injury resulted in PPD, the benefits are properly categorized as healing period benefits. See Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citing Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604–05 (Iowa 2005)).

Nicole Ruble, PA-C, wrote a letter dated April 3, 2017, releasing Young to return to work with restrictions, per the recommendation of William Jacobson, M.D. (Arb. Dec., p. 15) The defendants ceased paying Young healing period benefits on April 5, 2017. (Def. Ex. B, p. 2) Thus, the arbitration decision's conclusion that Young returned to work on April 3, 2017, the date of Ruble's letter, is incorrect. (Arb. Dec., p. 15) Instead, the weight of the evidence establishes Young returned to work on April 6, 2017.

April 6, 2017, is consequently the date upon which Young's PPD benefits must commence under the version of Iowa Code section 85.34(2) that is applicable to this case. The arbitration decision is amended and supplemented accordingly.

¹ Iowa Code (2017) contains all statutes of a general and permanent nature, including the acts of a permanent nature of the Eighty-Sixth General Assembly, 2015 and 2016. Online at: https://www.legis.iowa.gov/docs/shelves/code/ocr/2017%20lowa%20Code.pdf (last viewed Apr. 16, 2020).

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IT IS THEREFORE ORDERED:

- 1) The arbitration decision is amended and supplemented as described above.
- 2) The commencement date for Young's PPD benefits is April 6, 2017.
- 3) The arbitration decision remains the same in all other respects.

Signed and filed this 20th day of April, 2020.

BENJAMIN G HUMPHREY DEPUTY WORKERS'

COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Powell (via WCES)

Tiernan Siems (via WCES)